NO. COA12-530
NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2012

STATE OF NORTH CAROLINA

v. Stanly County
No. 11 CRS 50255-56

WILFREDO MORENO MORENO

Upon writ of *certiorari* from judgments entered 8 November 2011 by Judge Christopher M. Collier in Stanly County Superior Court. Heard in the Court of Appeals 8 October 2012.

Attorney General Roy Cooper by Assistant Attorney General John R. Green, Jr., for the State.

Anne Bleyman for defendant-appellant.

STEELMAN, Judge.

Where the stop of the vehicle in which the defendant was a passenger was supported by a reasonable suspicion of criminal activity, the trial court did not err in denying defendant's motion to suppress.

I. Factual and Procedural Background

Approximately one month prior to the stopping of the vehicle in which Wilfred Moreno Moreno (defendant) was a passenger, Officer Rendon of Charlotte-Mecklenburg Police Department ("CMPD") approached a person, who became the informant in this case, for assistance in a large federal cocaine investigation.

On or about 7 February 2011, the informant called Officer Rendon concerning future cocaine activity. He informed Officer Rendon that an older-looking Hispanic male, roughly 5'11" tall and weighing 180 to 200 pounds, would be delivering one kilogram of cocaine to 6701 Farthington Circle, Apartment 1F, in Charlotte. He also advised that someone in a burgundy Ford Expedition would deliver the cocaine to a location in the city of Locust in Stanly County. Upon receiving this information, Officer Rendon relayed it to Sergeant Straining of the Stanly County Sheriff's Office and set up surveillance at the Charlotte apartment complex. He later learned that defendant, defendant's brother, and the brother's girlfriend lived in Apartment 1F.

The surveillance team observed a Hispanic male who matched the description given by the informant arrive at the apartment. The male, later identified as Primitivo Franco Godiva, remained

inside for approximately ten minutes before he left in a burgundy Ford Expedition. Officer Rendon's surveillance team followed Godiva as he drove to Fort Mill, South Carolina and then entered a trailer. During this time, Officer Rendon contacted Sgt. Straining about the status of the surveillance. Approximately ten minutes later, Godiva exited the trailer and drove back to the apartment in Charlotte.

Godiva then exited the apartment with two other Hispanic males. He left in his original vehicle, and the other two Hispanic males, later identified as Ricardo Quiones (driver) and defendant, left in the burgundy Expedition. The surveillance team followed the Expedition. Officer Rendon contacted Sgt. Straining and informed him that it was headed toward Locust. They agreed that the Expedition should be stopped when it arrived within the city limits of Locust.

Sgt. Straining relayed the information, including descriptions of the Expedition and the suspects, to two Locust police officers. Upon Sgt. Straining's instruction, these officers stopped the vehicle at a McDonald's on North Carolina Highway 24/27. With the driver's consent, they searched the vehicle and found a package containing 990.7 grams of powder cocaine. Defendant was arrested.

On 9 May 2011, the grand jury indicted defendant for trafficking by transportation of 400 grams or more of cocaine; trafficking by possession of 400 grams or more of cocaine; conspiring to traffic in 400 grams or more of cocaine; and keeping and maintaining a vehicle for keeping and selling controlled substances. On 15 September 2011, defendant filed a motion to suppress the evidence seized as a result of the stop of the vehicle.

On 7 November 2011, the trial court denied defendant's motion to suppress. Defendant subsequently entered a plea of guilty to two counts of the lesser offenses of trafficking in cocaine, 200-400 grams, while preserving his right to appeal the trial court's ruling on the motion to suppress.

The trial court sentenced defendant to two consecutive terms of 70 to 84 months imprisonment.

Defendant appeals.

II. Jurisdiction

There is a question in this case as to whether defendant appealed from the judgments of commitment or only from the order denying his motion to suppress. We resolve this issue by granting defendant's petition for writ of *certiorari*.

III. Denial of Motion to Suppress

In his only argument on appeal, defendant contends that the trial court erred in denying his motion to suppress the evidence obtained as a result of the search of the vehicle. He contends that the officers improperly stopped the vehicle without reasonable suspicion. We disagree.

A. Standard of Review

Our review of a trial court's denial of a motion to suppress is "strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982) (citations omitted). "The trial court's conclusions of law, however, are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

B. Discussion

Defendant contends that the officers relied on an anonymous and unreliable tip and lacked reasonable suspicion for the stop. Defendant does not contest the validity of the search of the vehicle based upon the driver's consent.

The Fourth Amendment protects individuals from unreasonable

searches and seizures, such as an officer's unreasonable stop of a vehicle. *State v. Watkins*, ___ N.C. App. ___, ___, 725 S.E.2d 400, 403, *appeal dismissed*, ___ N.C. ___, 731 S.E.2d 416 (2012) (citing *State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 439 (2008); *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 676, 145 L. Ed. 2d 570, 576 (2000)). Under *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), however, investigatory stops may be constitutional where the officer has "a reasonable suspicion that criminal activity is afoot." *Watkins*, ___ N.C. App. at ___, 725 S.E.2d at 403. Reasonable suspicion requires more than a hunch and "must be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (citing *Terry*, 392 U.S. at 21-22, 88 S. Ct. at 1880, 20 L. Ed. 2d at 906). A tip may provide a basis for reasonable suspicion where it possesses sufficient indicia of reliability. *See Alabama v. White*, 496 U.S. 325, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990) (holding that an anonymous tip corroborated by police was sufficiently reliable to provide reasonable suspicion to make the stop).

In assessing a tip's reliability, we first consider whether the informant was anonymous or confidential and reliable. *Hughes*, 353 N.C. at 203, 539 S.E.2d at 628. Both situations require consideration of an informant's veracity, reliability, and basis for knowledge under the totality of the circumstances. *State v. Nixon*, 160 N.C. App. 31, 34, 584 S.E.2d 820, 822 (2003). "The difference in evaluating an anonymous tip is that the overall reliability is more difficult to establish, and thus some corroboration of the information or greater level of detail is generally necessary." *Id.*

We hold, in light of the trial court's findings and holdings and the totality of the circumstances, that the informant was a confidential reliable informant ("CRI") and that his tip was sufficiently reliable to provide a basis for Officer Rendon's reasonable suspicion. Although the informant was not identified in court, he had worked with Officer Rendon for more than one month prior to this incident. Officer Rendon testified that, based on his experience, he was able to verify information provided by the informant during that time. Officer Rendon also testified that, based on those interactions, he formed the opinion that the informant was a CRI.

While Officer Rendon did not personally effect the stop of

the vehicle, his reasonable suspicion was also sufficient for the Locust officers who acted on his and Sgt. Straining's instructions in stopping the vehicle. As we discussed in *Nixon*, the stopping officers' reliance on an informant's tip as provided by another officer is "justified and often necessary in the execution" of their duties as police officers. *Nixon*, 160 N.C. App. at 40, 584 S.E.2d at 826. This reliance provides the acting officers with the probable cause or reasonable suspicion necessary to stop a vehicle. *Id.* at 31, 584 S.E.2d at 820. Thus, the Locust officers, who relied on Officer Rendon's reasonable suspicion, also had reasonable suspicion to stop the vehicle.

Even assuming, *arguendo*, that the informant was not a CRI, we hold that the tip was sufficiently reliable as it was supported by police corroboration and formed the basis of reasonable suspicion.

There are many indicia of reliability that may suffice for an anonymous tip under the totality of the circumstances. *United States v. Perkins*, 363 F.3d 317, 324 (4th Cir. 2004), *cert. denied*, 543 U.S. 1056, 125 S. Ct. 867, 160 L. Ed. 2d 781 (2005). On the one hand, an anonymous tip is not sufficient to justify a stop merely because the defendant meets the informant's description. *See Hughes*, 353 N.C. 200, 539 S.E.2d 625 (2000)

(holding insufficient an anonymous tip that described a nicknamed suspect who would arrive by bus "possibly" at 5:30 and "sometimes" carried an overnight bag). Similarly, an anonymous tip is alone insufficient to justify a stop where officers fail to make independent observations. *See State v. McArn,* 159 N.C. App. 209, 582 S.E.2d 371 (2003) (holding an anonymous tip that a vehicle was involved in illegal drug sales was insufficient, without more, to justify a stop).

On the other hand, an anonymous tip can form part of a basis for reasonable suspicion where it provides predictive information that can be corroborated. *See Florida v. J.L.,* 529 U.S. 266, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000) (holding a tip lacked sufficient indicia of reliability where the officers' suspicion "arose not from their own observations but solely from a call made from an unknown location by an unknown caller"). A tip also can form the basis for an investigative detention where it is sufficiently corroborated by the officer's knowledge and experience. *See Perkins,* 363 F.3d 317 (holding that a tip, while not purely anonymous, was sufficient where corroborated by police).

The tip in *Hughes* was too vague because many individuals at the Jacksonville bus station could have matched the physical

description provided by the informant. In contrast, the tip in *White* was more descriptive and, while a close question, was held to be sufficient to form the basis for the stop. The informant provided a physical description, an apartment number, a vehicle description, the time of travel, and a specific destination.

In the instant case, the informant provided specific and articulable information, which Officer Rendon was able to corroborate through surveillance, guided by his experience and training. Further, unlike the tip in *J.L.*, this tip provided predictive information upon which Officer Rendon could "... test the informant's knowledge or credibility." *J.L.*, 529 U.S. at 271, 120 S. Ct. at 1379, 146 L.Ed.2d at 254. The informant provided details similar to those in *White*, and Officer Rendon corroborated this information through his surveillance: (1) a description of Godiva; (2) the location of the apartment, (3) a description of the vehicle; and (4) the route and destination of the vehicle.

Considering the credibility of the informant and his basis for knowledge, we conclude that the tip, supported by corroboration, was sufficiently reliable to form a basis for Officer Rendon's reasonable suspicion. Moreover, applying *Nixon* as discussed above, we find that Sgt. Straining and the

arresting Locust police officers had reasonable suspicion to justify stopping the vehicle. In addition to *Nixon*, in *United States v. Hensley*, 469 U.S. 221, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985), the United States Supreme Court enunciated what is now known as the collective knowledge doctrine, which provides:

> [T]hat when an officer acts on an instruction from another officer, the act is justified if the instructing officer had sufficient information to justify taking such action herself; in this very limited sense, ... [it] simply directs us to substitute the knowledge of the instructing officer or officers for the knowledge of the acting officer.

United States v. Massenburg, 654 F.3d 480, 492-493 (4th Cir. 2011). *See also United States v. Williams*, 627 F.3d 247, 252 (7th Cir. 2010) (explaining that "[t]he collective knowledge doctrine permits an officer to stop, search, or arrest a suspect at the direction of another officer or police agency, even if the officer himself does not have firsthand knowledge of facts that amount to the necessary level of suspicion to permit the given action[]").

Here, Officer Rendon updated Sgt. Straining several times throughout his personal surveillance of defendant; and Sgt. Straining relayed this information to the Locust officers. Therefore, the officers effecting the stop of the vehicle were

justified in relying on Officer Rendon's reasonable suspicion of criminal activity.

For these reasons, the trial court did not err in denying defendant's motion to suppress.

AFFIRMED.

Chief Judge MARTIN and Judge ERVIN concur.

Report per Rule 30(f).